

Georgia, now pending as Civil Action No. 09A-06404-6. The Superior Court of Gwinnett County is a state court within this judicial district and division.

2.

A copy of the Complaint and Summons received by Defendant Gwinnett County School District on July 15, 2009 is attached as Exhibit A. A copy of the Complaint and Summons received by Defendant Georgann Eaton on July 22, 2009 is attached as Exhibit B. No other process, pleadings or orders have been received by either Defendant by service or otherwise.

3.

This notice of removal is timely pursuant to 28 U.S.C. § 1446(b), which provides in pertinent part as follows:

The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

4.

Thus, this notice of removal is timely because it is filed within thirty (30) days of the receipt of the Summons and Complaint on the Defendants. Defendant Gwinnett County School District's first receipt of the Summons and Complaint occurred on July 15, 2009 and Defendant Georgann Eaton's first receipt of the Summons and Complaint occurred on July 22, 2009. In addition, this action was commenced less than one (1) year ago.

5.

This case is properly removable pursuant to 28 U.S.C. § 1441 (a) and (b), which provide as follows:

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution,

treaties, or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

FEDERAL QUESTION

6.

This action is properly removable as a federal question pursuant to 42 U.S.C. § 1983 and The Americans with Disabilities Act codified at 44 U.S.C. § 12112, et seq. Under 28 U.S.C. § 1331 and § 1337 this action may be maintained in any Federal court of competent jurisdiction. See Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 103 S.Ct. 2841 (1983) and Pacheco de Perez v. AT & T Co, 139 F.3d 1368 (11th Cir. 1998)

7.

This case is a civil action within in the meaning of the Acts of Congress relating to the removal of causes.

8.

The Defendants have heretofore sought no similar relief.

9.

A copy of this notice is being filed with the Clerk of the Superior Court of Gwinnett County, State of Georgia as provided under 28 U.S.C. § 1446. This Defendant is also giving prompt written notice to the Plaintiff of the filing of this notice of removal.

WHEREFORE, Defendants Gwinnett County School District and Georgann Eaton request that this Court take jurisdiction of this action and issue all necessary orders and process to remove this action from the Superior Court of Gwinnett County, Georgia to the United States District Court for the Northern District of Georgia, Atlanta Division.

This 13th day of August, 2009.

Respectfully submitted,
THOMPSON & SWEENEY, P.C.

By: 

Victoria Sweeny
State Bar No. 694663
Elizabeth F. Kinsinger
State Bar No. 261755
Stephen D. Pereira
State Bar No. 572051
Attorneys for Defendant

P.O. Drawer 1250
Lawrenceville, GA 30046
(770) 963-1997 Telephone
(770) 822-2913 Facsimile
Email:
vsweeny@thompson-sweeny.com
efk@thompson-sweeny.com
sp@thompson-sweeny.com